IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9921 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VASUDEV V JANI

Versus

GUJARAT POLLUTION CONTROL BOARD

Appearance:

1. Special Civil Application No. 9921 of 1995

MR KISHOR M PAUL for Petitioner No. 1

MR DG CHAUHAN for Respondent No. 1

MR ND SONGARA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 08/10/2004

ORAL JUDGEMENT

In this petition, the petitioner-workman has challenged the legality of the award dated 19.7.95 passed

by the Presiding Officer, Labour Court, Rajkot. By the impugned award, the Labour Court was pleased to reject the reference of the petitioner-workman. It appears that earlier the reference of the workman was allowed by the Labour Court against which the respondent, Gujarat Pollution Control Board ("respondent Board" for short) had filed Special Civil Application before this High Court and the award of the Labour Court was set aside and the matter was remanded to the Labour Court for fresh consideration. In the second round of hearing, the Labour Court was pleased to reject the reference of the workman by the impugned award dated 19.7.95. Aggrieved by the said award, the petitioner has approached this Court by filing this petition.

2. Counsel for the petitioner, after taking this Court through the award and other relevant documents on record, has submitted that the Labour Court erred in rejecting the reference of the petitioner since the Labour Court had come to the conclusion that the petitioner had actually worked for more than 240 days during the relevant period of 12 calendar months prior to the termination, the Labour Court ought to have set aside the termination of the petitioner especially when it was also found that before terminating the services of the workman, the respondent Board had not paid the retrenchment compensation nor notice pay or notice was issued, as required under section 25-F of the Industrial Disputes Act. Counsel for the petitioner also submits that the Project on which the petitioner was engaged was over long time after the termination of the petitioner and that therefore, the findings of the Labour Court that the Project having been over, termination cannot be set aside is erroneous. He has further contended that though the petitioner was shown to have been engaged for a particular project, in reality, the petitioner was being assigned the work of clerical nature in the office of the Board.

3. In support of his contention that the termination was in violation of the provisions of section 25-F of the Industrial Disputes Act, counsel for the petitioner has relied on the judgment and order dated 23.4.2002 of the learned single Judge of this High Court passed in Special Civil Application No.4349 of 2001, in case of Shri Sompura Dharmendra Hathi v. Gujarat State Land Development Corporation.

4. Appearing for the respondent-Board, learned counsel Shri D.G.Chauhan has pointed out that the petitioner was appointed for a particular project and

that his appointment was a fixed term appointment. From the Office Order No.94/90 by which the appointment of the petitioner was extended by a period of two months, Shri Chauhan points out that the appointment of the petitioner was purely temporary and ad-hoc and was extended upto 31st December, 1990 and when no further extension orders were passed and the services of the petitioner were terminated with effect from 31st December 1990, he submits that the termination would not be in violation of section 25-F of the Industrial Disputes Act. He submits that the petitioner was appointed through a fixed term appointment contract and upon completion of the period specified in the contract if the services of the petitioner were terminated, his case would be governed by the exclusion clause (bb) of section 2(oo) of the Industrial Disputes Act.

5. Having considered the rival submissions, it is not in dispute that the petitioner had though completed 240 days during the relevant period, no notice or notice pay was given to the petitioner, nor any retrenchment compensation was paid, the crucial question is whether the termination of the petitioner can be held to be retrenchment under section 2(oo) of the Industrial Disputes Act or whether the case would be governed by the exclusion clause (bb) of section 2(oo) of the said Act. As noted earlier, the petitioner was appointed by specific appointment orders from time to time and the last such appointment order was issued by which the appointment of the petitioner was extended from 5.10.90 to 31.12.90. Upon completion of the said period, the petitioner's services stood terminated with effect from 31.12.90. I am therefore, of the opinion that the case of the petitioner would not be covered under the definition of retrenchment as found under section 2(oo) of the said Act. In view of the clear language of clause (bb) of section 2(oo) of the said Act wherein it is provided that termination of the services of a workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry or on such contract being terminated under a stipulation in that behalf contained therein, will not be included in the term retrenchment.

6. In the decision in the case of P.R.Kachhdia v. State, 2000 (2) GLR 1793, this Court was pleased to hold that daily-wage workman appointed for fixed period and posted for different works and the services is terminated when the contract of employment was over would be governed by the provisions of section 2(oo)(bb) of the Act and the termination would not amount to retrenchment

requiring the employer to follow the procedure under section 25-F of the Industrial Disputes Act.

7. In the decision of the learned single Judge dated 23.4.02 in Special Civil Application No.4349 of 2001 (supra) upon which the learned counsel for the petitioner has placed reliance, it can be seen that it was a case where there was no specific written order issued by the employer to the workman and no specific contention regarding the provisions of section 2(oo)(bb) of the said Act were raised before the Labour Court. In that view of the matter, the learned single Judge came to the conclusion that violation of the provisions of section 25-F of the Industrial Disputes Act would be fatal to the action of termination. The said case is distinguishable in the facts of the case since in the case at hand, there is a specific written order wherein it is provided that the workman is engaged only upto 31st December 1990 unlike in the above mentioned case decided by the learned single Judge where there was no written contract.

8. On the basis of the above discussion, I find that the Labour Court was justified in rejecting the reference of the petitioner and no illegality has been committed by the Labour Court. The petitioner has not made any case for interference.

9. In the result, the petition fails and is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)
(vjn)